

Remarks

Applicants thank the Examiner for the careful review and consideration of the application. Claims 1, 4, 5, 8-16, 18-20, and 24-49 are currently pending. Claims 8, 10, 27, and 30-42 have been subjected to a restriction requirement and are withdrawn from consideration.

All pending independent claims under consideration, namely claims 1, 5, and 28, have been amended to specify that the manufacturer coupons bear machine readable code. Withdrawn independent claims 8, 34, 35, 39, and 42 have been amended to incorporate similar limitations. The subject claims were not intended to cover ordinary text typically printed on coupons, which at least theoretically could be read by optical character recognition technology. Thus, the current amendments now specify that the machine readable indicia are machine readable code.

In his Office Action, the Examiner rejected claims 1-4, 9, 11-16, 18-20, 24-25, and 43-44 under 35 U.S.C. § 103(a) as obvious over U.S. Published Patent Appl. 2004/0010448 to J. Miller (“Miller”) in view of French Pat. 2,422,562 of C. Planchard (“Planchard”) and prior art admitted by applicants (“Admitted Prior Art”).

Claims 26, 28, and 29 were rejected under 35 U.S.C. § 103(a) as obvious over Miller, Planchard, and Admitted Prior Art, further in view of U.S. Pat. 4,007,577 to E. Matthews *et al.* (“Matthews”).

Claims 5 and 45-49 were rejected under 35 U.S.C. § 103(a) as obvious over Miller, Planchard, and Admitted Prior Art, further in view of U.S. Published Appl. 2005/0086910 A1 of P. Chambers *et al.* (“Chambers”).

It is believed, however, that none of the prior art, either alone or in combination, discloses or would have suggested the subject claims as amended. Those rejections, therefore, are traversed.

Rejection of Claim 1 and Claims Depending Thereon

Claim 1 is directed to methods of distributing manufacturer coupons that utilize single-serve food products. Single-serve food products are packed in pouch containers that have separable manufacturer coupons bearing machine readable code. The single-serve food packs then are distributed to consumer food service outlets, such as restaurants. Claim 1 is set forth below.

1. A method for disseminating *manufacturer coupons* to consumers, which method comprises:

(a) packaging a product in *a pouch container having a manufacturer coupon associated therewith* which may be viewed by a consumer, wherein *said product is a single-serve food product* and wherein *said manufacturer coupon* is redeemable by a consumer of said product and *includes machine readable code* associated therewith to facilitate automated processing of said coupon;

(b) *distributing said packaged product with said manufacturer coupon to a consumer food service outlet; and*

(c) distributing said packaged product with said manufacturer coupon to consumers associated with said consumer food service outlets, thereby disseminating said manufacturer coupon to said consumers;

(d) wherein said pouch container comprises one or more flexible imprintable substrate sheets; wherein said substrate sheets comprise collectively:

(i) one or more pouch sections defining a sealed volume accommodating a product therein, said pouch sections being provided on one or more of said substrate sheets; and

(ii) a message section providing a substrate on which said manufacturer coupon is imprinted, said message section being provided on one of said substrate sheets and being connected to at least one of said pouch sections;

(iii) wherein said message section is separable from said pouch sections without compromising the integrity of said sealed volume, whereby said manufacturer coupon may be removed from said sealed volume and redeemed by a consumer.

(emphasis added).

None of the cited references disclose such limitations, nor would the combination of such limitations have been suggested by any combination of the cited references. Miller is the primary reference relied upon by the Examiner. It discloses methods for disseminating “advertising indicia” on “disposable consumer items”. It specifically mentions, among numerous other items, “food containers, condiment packages ... or other disposable consumer products related to the food and beverage industry. *Importantly, however, Miller does not disclose any particular type of packaging for condiment packages or any other single serve food products. It also does not disclose any use of manufacturer coupons, referring only to generic “advertising indicia”. It does not disclose manufacture coupons with machine readable code. It does not disclose distributing the manufacturer coupon bearing single serve food products through consumer food service outlets.*

Planchard is combined with Miller. It discloses four-sided pouch containers or “dose bags” with detachable “flaps” which may be used as a “price-reduction coupon for a subsequent purchase.” *See, e.g., p. 2, ¶ 4.* The pouches are used to package cleaning and toiletry products in the form of liquids, pastes, or solids and paper towels impregnated with toilet water, stain remover, cleaning product, and make-up remover. *See p. 3, ¶ 7. Planchard ‘562, however, does not disclose that the manufacturer coupons should include machine readable code, that the pouches should be used to package single-serve food products, or that such packets should be distributed through consumer food service outlets.*

The Examiner also combines the Admitted Prior Art. Applicants of course acknowledge and stand by their prior admissions as to features disclosed in the art apart from the specific references under discussion. Those admissions are set forth below:

Many products, such as food and consumer household products, are promoted extensively using manufacturer coupons.

* * *

Cross-ruffing typically involves printing coupons on, or removably affixing coupons to packaging for products.

* * *

Cross-ruffing has become common on certain products distributed through certain distribution channels, such as breakfast cereals sold in grocery stores. Nevertheless, and despite the advantages of presenting an advertising message directly to a target audience and its significant cost advantage over other forms of direct advertising, the types of products and packaging utilized to carry cross ruffed and bounce back advertising messages have been limited.

* * *

To date ... single-serve products have not been used or used effectively as vehicles to deliver advertising messages, especially in food service establishments. Typically any advertising messages are limited to relatively simple branding messages and such messages usually pertain to the packaged product. *A fortiori, manufacturer coupons have not been delivered to consumers by associating them with single-serve food packets distributed through restaurants and the like.*

* * *

Applicants do not contend that any single feature of the subject claims, in and of itself, is novel. Distributing single-serve food pouch containers through restaurants and other food service outlets was known, and indeed, that is the primary purpose for which such products are manufactured. Likewise, bar-coded manufacturer coupons are conventional, as is using third party products to cross-ruff manufacturer coupons. Pouch containers having manufacturer coupons are also known. *What has not been appreciated prior to applicant's invention, however, is that a heretofore unknown combination of such known features results in a uniquely effective method for distributing manufacturer coupons.*

Response to Office Action Under 37 C.F.R. § 1.111, dated October 31, 2005 (emphasis added).

Applicants cannot stress enough, however, that those admissions are limited by their express terms to features either found or not found in the prior art. Specifically, applicants did not concede, as the Examiner implies or expressly states, that teachings or suggestions for combining those features in the manner proposed by the Examiner existed in the prior art or that

it would have been obvious to make the proposed combinations and substitutions to reconstruct the claimed invention.

Regardless of whether a feature is disclosed in prior art cited by the Examiner or is conceded by applicants to exist in the prior art, the Examiner still bears the burden of proving some teaching or suggestion in the prior art that would support making a combination which produces the claimed invention. *See Kahn v. General Motors Corp.*, 135 F.3d 1472, 1480 (Fed. Cir. 1998); *B.F. Goodrich Co. v. Aircraft Braking Systems Corp.*, 72 F.3d 1577, 1582 (Fed. Cir. 1996). In regard to claim 1 and its dependent claims, there is no teaching or suggestion that the disclosed methods should be modified by associating a manufacturer coupon with single serve food products, that the manufacturer coupon should have a machine readable code, and that the coupon bearing products should be distributed through food service outlets.

Rejection of Claim 28 and Claims Dependent Thereon

Claim 28, like claim 1, is also directed to methods of distributing manufacturer coupons that utilize single-serve food products. Single-serve food products are packed in pouch containers that have separable manufacturer coupons bearing machine readable code. The single-serve food packs then are distributed to consumer food service outlets, such as restaurants. Thus, the rejection of claim 28 cannot be supported for the reasons stated above in respect to claim 1.

Claim 28, however, also requires that the package for the single serve food product be a so-called “three-sided seal” pouch container wherein the pouch containers are fabricated from a continuous web. The web defines a plurality of substrate sheets, each of which ultimately provides a substrate sheet from which an individual pouch container is fabricated. The pouch

containers are fabricated by folding, sealing, and cutting the web. Claim 28, as amended, is set forth below:

28. A method for disseminating *manufacturer coupons* to consumers, which method comprises:

- (a) packaging a product in a pouch container having a manufacturer coupon associated therewith which may be viewed by a consumer, wherein said product is a single-serve food product and wherein *said manufacturer coupon* is redeemable by a consumer of said product and *includes machine readable code associated therewith to facilitate automated processing of said coupon*;
- (b) *distributing said packaged product with said manufacturer coupon to a consumer food service outlet*; and
- (c) distributing said packaged product with said manufacturer coupon to consumers associated with said consumer food service outlets, thereby disseminating said manufacturer coupon to said consumers;
- (d) wherein said pouch container comprises a flexible imprintable substrate sheet; wherein:
 - i) *said substrate sheet comprises one or more pouch sections and at least one message section adjacent to a pouch section*;
 - ii) *wherein said substrate sheet is folded longitudinally such that the boundaries of said pouch sections overlap, the boundaries of said pouch sections being sealed together to define a sealed volume accommodating said product therein with said message section extending from a sealed boundary of said pouch section*;
 - iii) wherein said message section provides a substrate on which said manufacturer coupon is imprinted for viewing by a consumer of said product;
 - iv) wherein said message section is separable from said pouch section and the sealed volume defined by said pouch section without

compromising the integrity of said sealed volume to enable a consumer to redeem said manufacturer coupon; and

v) *wherein said pouch container is produced by folding and sealing a continuous web, said web providing thereon a plurality of areas corresponding to a plurality of said substrate sheets connected to each other by said web, and by cutting the web interconnecting said pouch containers to provide individual product units containing at least one pouch container.*

(emphasis added).

Claim 28 was rejected as obvious over Miller, Planchard, Admitted Prior Art, and Matthews. Miller, however, does not disclose any product packaging for single-serve food products. *A fortiori*, it does not disclose three-sided seal pouch containers with a message section. As noted above, Miller does not disclose many other features set forth in claim 28. It does not disclose any use of manufacturer coupons, referring only to generic “advertising indicia”. It does not disclose manufacture coupons with machine readable code. It does not disclose distributing the manufacturer coupon bearing single serve food products through consumer food service outlets. It does not disclose manufacturing the pouches from a continuous web.

Planchard discloses a so-called “four-sided” seal pouch, that is, where the pouch is formed from a pair of substrate sheets instead of by folding and sealing a single sheet. It does not disclose three-sided seal pouches. It also does not disclose that the manufacturer coupons should include machine readable code, that the pouches should be used to package single-serve food products, that such packets should be distributed through consumer food service outlets, or that the pouch should be fabricated from a continuous web, all of which are required by claim 28.

Matthews, the additional reference cited by the Examiner does disclose three-sided seal pouch containers, but those pouch containers lack any message section. *A fortiori*, there is no disclosure of manufacturer coupons on any message section, manufacturer coupons having machine readable code, or distribution of advertising messages through single-serve food products distributed to food service outlets.

Thus, in order to reconstruct the claimed invention, the Examiner is selectively picking and choosing features from three prior art references and from the many, many features that applicants have acknowledged to be in the prior art. That is improper. There is no suggestion or teaching that other options available to workers in the art should be ignored and that only those features set forth in the claims should be should be selectively picked out and combined to yield the claimed methods.

That applies with even greater force to claim 29, which depends on claim 28. Claim 29 is directed to a three-sided seal pouch where the substrate sheet is folded on a line through the pouch section such that the message section in the finished pouch extends from the side opposite the fold line.

Rejection of Claim 5 and Claims Dependent Thereon

Claim 5 is further directed to methods of distributing manufacturing coupons to targeted consumers. Those methods, like the methods set forth in claims 1 and 28, utilize single-serve food products packed in pouch containers that have separable manufacturer coupons with machine readable code. The single-serve food packs ultimately are distributed to consumer food service outlets.

The packs, however, are distributed to restaurants and other food service outlets that are associated with a target consumer group. More specifically, the single-serve food packs are

packaged in cartons that have machine readable indicator uniquely associated with the particular manufacturer coupon. Thus, the shipment of the manufacturer coupon to restaurants associated with targeted consumers is facilitated. Claim 5 is set forth below.

5. A method for disseminating *manufacturer coupons* to a target consumer group, which method comprises:

(a) packaging a product in *a pouch container having associated therewith a manufacturer coupon* pertaining to products or services other than said packaged product, wherein *said packaged product is a single-serve food product*, wherein *said manufacturer coupon* is redeemable by a consumer of said product and *includes machine readable code* associated therewith to facilitate automated processing of said coupon, and said manufacturer coupon is intended for a target consumer group;

(b) *packaging said packaged product in a shipping carton having a machine readable indicator uniquely associated with said manufacturer coupon*;

(c) *reading said indicator and in response thereto shipping said carton to consumer food service outlets associated with said target consumer group*, whereby said packaged single-serve food product may be distributed to consumers thereby disseminating said manufacturer coupon.

(emphasis added).

Claim 5 was rejected as obvious over Miller, Planchard, and Admitted Prior Art, further in view of Chambers. None of the cited references disclose such limitations, nor would such limitations have been disclosed by any combination of the cited references.

As discussed above, the combination of Miller, Planchard, and Admitted Prior Art would not have yielded a method wherein single-serve food products are used to distribute manufacturer coupons to restaurants and other consumer food service outlets, all of which are required by claim 5. They also would not have yielded, either alone or also in combination with Chambers, a method where the coupon bearing single-serve food products are packaged in a shipping container with a machine readable indicator, where the machine readable indicator is

uniquely associated with the manufacturer coupon, and where the shipping carton is shipped to a target food service outlet in response to reading the indicator.

Chambers '910 discloses a multi-pack package for single serve food products. It is particularly adapted for "larger or jumbo-sized" packaged articles, such as snack chips and pretzels packaged in pouch containers, which encourage "bulk" purchases. *See, e.g.*, ¶¶ 4, 7, 44-46. The multi-pack package includes a bar code that identifies both "the product and the vendor that sells the product." *See* ¶ 45. Neither the packs themselves, nor the multi-pack package includes a manufacturer coupon. The bar code is on the multi-pack package, not on a manufacturer coupon, and the bar code is not uniquely associated with a manufacturer coupon. Moreover, while there is no express discussion of the channels through which the multi-packs should be distributed, they clearly appear to contemplate distribution through food retail outlets such as grocery stores. *See, e.g.*, ¶¶ 2-11, 44-46, and 57. In any event, there is no suggestion that the multi-pack should be distributed in consumer food service outlets or to food service outlets associated with a targeted consumer group.

The Examiner states that

Chambers discloses placing pouches 22 in a shipping carton 24 with a machine-readable indicator 60 for transport with subsequent reading upon receipt. As the indicator 60 is uniquely associated with the retained products it is also uniquely associated with the coupon.

First, claim 5 requires that the pouch container have a manufacturer coupon, that the coupon have machine readable code, that the pouch container be packaged in a shipping carton having a machine readable indicator, and finally that the machine readable indicator be uniquely associated with the manufacturer coupon. Chambers does not disclose any coupons on the packaged articles, it does not disclose any machine readable code on the non-existent coupons, and it does not disclose associating the bar code symbol 60 which is on a carrier 24 with any

non-existent coupons. Moreover, since in practice applicant's invention would associate manufacturer coupons for a variety of products with a given single-serve food product, the fact that bar code symbol 60 is uniquely associated with the product, does not mean that it would be uniquely associated with any non-existent coupons. The non-existent coupons could be for a variety of products, and the Examiner's conclusion quoted above is simply wrong.

Moreover, despite the Examiner's characterization of it as a "shipping carton", Chambers refers to a "carrier 24" with a handle 26. As noted, Chambers contemplates distribution of its jumbo packs through food retail outlets such as grocery stores. *See, e.g.*, ¶¶ 2-11, 44-46, and 57. Clearly, therefore, the bar code symbol 60 would be read at the checkout counter after having been carried there from the grocery store shelf by the consumer. There is no disclosure that the bar code symbol 60 is being read prior to shipping to the grocery store and no suggestion that it should be. Most likely, a plurality of such "carriers" is packed in a shipping carton prior to being sent to the grocery store. Chambers is silent on such matters, but claim 5 requires that the carton filled with coupon bearing single-serve products be shipped to a consumer food service outlet in response to reading an indicator on the carton.

Applicants strenuously disagree that the extensive cutting and pasting of prior art elements required to reconstruct the methods set forth in claim 1 is proper. However, even if that combination would have been obvious, there was no suggestion or teaching to combine that combination with Chambers. Chambers is not directed to coupon bearing single-serve food products distributed to consumers through restaurants and other food service establishments. It is directed to distribution of jumbo packs through grocery stores.

Moreover, had the teachings of Chambers been applied to the hindsight reconstruction of the claimed pouch containers, it would not yield the methods described in claim 5. The worker

in the art would have taken, for example, two or three ketchup packets, put them in carrier 24 with a handle 26, and put a bar code 60 on the carrier 24. The bar code 60 would identify the contents of the package as ketchup and the vendor of the ketchup. While such an arrangement could conceivably serve as a holder for the ketchup packets, it does not yield a distribution system where a machine readable indicator is placed on a shipping carton, where the indicator is uniquely associated with a manufacturer coupon associated with product in the package, and where the product-filled shipping carton is shipped to target food service establishments in response to reading the indicator.

Indeed, had the bar code 60 been read prior to shipment of the carrier 24, it would have prompted shipment to establishments ordering ketchup. The reading could not have prompted shipment to an outlet which not only required ketchup, but to an outlet where consumers may be predisposed to redeem a particular manufacturer coupon. The bar code 60 has no information identifying the coupon. It only identifies the product as ketchup and the vendor of the ketchup.

Accordingly, claim 5 and claims 45-49 which depend thereon, would not have been obvious in light of the references cited by the Examiner or any other references of record.

Conclusion

It is believed that all of the Examiner's objections and rejections either have been obviated or lack sufficient basis and should be withdrawn. All claims are in condition for allowance. Prompt and favorable reconsideration, therefore, is earnestly solicited.

The Examiner is invited to contact the undersigned attorney at (832) 656-3853 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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